IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 536 OF 2007

Anil Sadashiv Nanduskar, Age 38 years, Occu.- Business, residing Nariman Bhat Nagar, Old Prabhadevi Room No. 26, Mumbai-400 025. (At present detained at Yerwada Central Prison, Pune.	)	Appellant (Original Accused No.1)
Vs.		
The State of Maharashtra	)	Respondent

Sri S. R. Chitnis, Sr. counsel with Smt. V. R. Raje for the appellant.

Sri S. R. Borulkar, Public Prosecutor for respondent.

CORAM : SRI R.M.S. KHANDEPARKAR &
SRI A.A. SAYED, JJ.

DATE : NOVEMBER 23, 2007.

ORAL JUDGMENT [PER SRI R.M.S. KHANDEPARKAR, J.]

. This appeal arises from order dated 23rd April 2007 passed by the learned Special Judge under the Maharashtra Control of Organised Crime Act 1999 (hereinafter referred to as the MCOC Act). By the

impugned order, the learned Special Judge Pune in Special Case No. 2 of 2005 has dismissed various applications, including the application raising objection for framing of charge on the ground of invalid approval under section 23(1)(a) and invalid sanction under S. 23(2) of the MCOC Act. It was the case of the appellant that the approval and the sanction issued under the said provision of law were invalid as they were issued without application of mind.

2. The appellant is the accused No.1 in Special Case No. 2 of 2005 before the Special Judge Pune and he is facing trial on accusation of commission of offence punishable under S. 3(1)(i) and 3(2) of MCOC Act. An application was sought to be moved for discharge of the appellant/accused on various grounds, which came to be dismissed by the impugned order dated 23rd April 2007. The said order is sought to be challenged on two grounds. Firstly that the Special Judge failed to take note of the fact that the approval which was sought to be granted under section 23(1)(a) of the MCOC Act was without application of mind, and therefore, bad in law and the fact that it is without application of mind is apparent on the face of record

in as much as that though the appellant was sought to be prosecuted for commission of the offence of organized crime, the letter of approval does not disclose that the concerned authority had taken into consideration whether the materials placed before it disclose the factum of commission of alleged offence of organized crime by the appellant so as to enable the investigating agency to commence investigation under the MCOC Act. Secondly, that the Special Judge failed to take note of the fact that the appellant was sought to be prosecuted without valid sanction which is pre-requisite for initiating prosecution against the accused under MCOC Act, and also that the sanction in question was granted without application of mind in as much as that it does not ex-facie disclose that the concerned authority had considered as to whether the appellant was member of the alleged syndicate involved in commission of an offence with the object of pecuniary gain or economic benefits.

3. The trial Court after considering the materials placed before it by the investigating agency and taking into consideration the provisions of law comprised under MCOC Act held that there was no substance in the objection which was sought to be

raised on behalf of the appellant, and neither the approval nor the sanction ex-facie discloses to be invalid and hence, dismissed the application for discharge of the appellant.

4. Placing reliance in the decisions in the matter of- (i) **State of Maharashtra & Ors. Vs. Lalit Somdatta Nagpal and Anr.** reported in (2007) 4 Supreme Court Cases 171, **(ii) Sherbahadur Akram Khan & Ors. Vs. State of Maharashtra** reported in 2007 **(**1) AIR Bom. R. 320. **(iii) State of Maharashtra Vs. Bharat Baburao Gavhane & Ors.** reported in 2006 All MR (Cri.) 2895. **(iv) Anirudhsinhji Karansinhji Jadeja & Anr. Vs. State of Gujrat** reported in (1995) 5 SCC 302, the learned counsel appearing for the appellant submitted that the law on the point of requirement of clear and valid approval is well settled. The approval should disclose proper application of mind by the competent authority, as regards the involvement of the offence for which approval for recording of FIR and investigation is to be granted. In case of absence of reference to such offence in the approval letter, it would reveal non application of mind by the concerned authority. Referring to the approval dated 28th August 2004 stated to have been issued in exercise of powers

under Section 23(1)(a) of MCOC Act, he submitted that it ex-facie discloses that the same nowhere refers to any finding about involvement of the petitioner in an offence which could be said to be of the nature of organized crime within the meaning of the said expression under MCOC Act and therefore the approval is to be held to be bad in law and consequently all further proceedings are required to be declared unlawful. Further referring to the decisions in the matter of- (i) **Mukhtiar Ahmed Ansari Vs. State (NCT of Delhi),** reported in (2005) 5 SCC 258, (ii) **Rambhai Nathabhai Gadhvi & Ors. Vs. State of Gujrat** reported in (1997) 7 SCC 744. **(iii) Dilawar Singh Vs. Parvinder Singh @ Iqbal Singh & Anr.** reported in (2005) 12 SCC 709 and **Lalit Somdatta Nagpal (supra)**, he submitted that the sanction for prosecution under MCOC Act should ex-facie disclose that the authority had considered the case of the accused with reference to the materials on record before the grant of sanction. It should ascertain whether the provisions of MCOC Act are attracted in case of each of the accused or not and the consideration thereof should be ex-facie apparent on the face of sanction order, failing which sanction should be considered invalid, entitling the accused for discharge. He further submitted that the existence of

valid sanction is **sine-qua-non** for taking cognizance of the offence under MCOC Act and in view of invalid sanction, no prosecution can lie against the appellant. He further submitted that considering the stringent provisions of MCOC Act, they are to be strictly interpreted and having so interpreted, the requirement of valid sanction has to be considered as a pre-requisite for prosecution.

5. The learned PP on the other hand drawing our attention to the decision in **Kalpanath Rai Vs. State (through CBI), reported in (1997) 8 Supreme Court Cases 732** and referring to the decision of this Court in Crim. Writ Petition Nos. 988 of 2006, 989 of 2006, 1043 of 2006, 1840 of 2006, delivered on 10th November 2006, submitted that the order of approval and that of the sanction being merely to initiate the proceedings and as both the orders in the case in hand ex-facie disclose that all the relevant materials were produced before the concerned authorities before the grant of approval and sanction, no fault can be found with the impugned order dismissing the application for discharge. He further submitted that the law on the point as to whether the accused is required to be heard or not prior to grant of approval or sanction is well

settled and the law in that regard is that no such hearing is required to be granted to the accused. He further submitted that mere grant of approval or sanction cannot be said to be affecting the rights of the accused. He also submitted that in any case, even assuming that there is any deficiency in the letter of approval or sanction, the same can be explained by leading evidence by the prosecution and and being so, even assuming that there is some omission of some words in the sanction or approval order, that could be no justification for discharge of the accused without affording opportunity to the prosecution to establish the validity of the approval or sanction by leading necessary evidence in the course of trial. He further submitted that reading of the approval as well as sanction in question nowhere discloses any such irregularity, and even ex-facie both the orders are valid and lawful and therefore, there is no substance in the grievance sought to be made on behalf of the appellant.

6. Only point which arises for consideration in the matter is whether the approval dated 28th August 2004 stated to have been granted in exercise of powers under Section 23(1)(a) of MCOC Act and the sanction

dated 7th January 2005 granted in terms of Section 23(2) of MCOC Act are valid and lawful.

7. As long back as in 1948, the Privy Counsel in **Gokulchand Dwarkadas Vs. The King,** reported in AIR 1948 Privy Counsel 82 had laid down that the sanction for prosecution would be good if it was proved by evidence that it had been granted after all the necessary facts had been placed before the sanctioning authority though those facts might not have been stated on the face of the sanction itself. The view taken by the Privy Counsel was fully endorsed by the Apex Court in **Feroz Din and Ors. Vs. State of West Bengal,** reported in AIR 1960 Supreme Court 363.

8. In **State of Rajasthan Vs. Tarachand Jain,** reported in **(1974) 3 Supreme Court Cases 72** the Apex Court while dealing with the aspect of burden of proof regarding sanction held that, "the burden of proof that the requisite sanction had been obtained rests upon the prosecution. The burden includes proof that sanctioning authority had given the sanction in reference to the facts on which the proposed prosecution was to be based. These facts might appear on the face of the sanction or it might be proved by

independent evidence that sanction was accorded for prosecution after those facts had been placed before the sanctioning authority." While ruling so, reference was made to the observations of Privy Counsel in **Gokulchand Dwarkadas (supra).**

9. In **Superintendent of Police (C.B.I.) Vs. Deepak Chowdhary & Ors.** reported in **(1995) 6 Supreme Court Cases 225,** Apex Court while dealing with the similar issue held that, "the grant of sanction is only an administrative function, though it is true that the accused may be saddled with the liability to be prosecuted in a court of law. What is material at that time is that the necessary facts collected during investigation constituting the offence have to be placed before the sanctioning authority and it has to consider the material. Prima facie, the authority is required to reach the satisfaction that the relevant facts would constitute the offence and then either grant or refuse to grant sanction. The grant of sanction, therefore, being administrative act the need to provide an opportunity of hearing to the accused before according sanction does not arise."

10. In **Mohd. Iqbal Ahmed Vs. State of Andhra**

Pradesh reported in **(1979) 4 Supreme Court Cases 172,** it was held that it is incumbent upon the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence and this should be done in two ways : either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction, or (2) by adducing evidence aliunde to show that the facts were placed before the Sanctioning Authority and the satisfaction arrived at by it. The said ruling was given in a case where the resolution of the Sanctioning Authority did not disclose the facts on the basis of which the prosecution was sanctioned against the appellant therein nor the said document contained any ground on which the satisfaction of the Sanctioning Authority was based or it had applied its mind, and the document merely mentioned that the sanction was given on the basis of a note of the Commissioner of Municipal Corporation. No evidence was produced, either primary or secondary, to prove as to what were the contents of the materials which were placed before the Sanctioning Authority. It was therefore, observed by the Apex Court that, "the grant of sanction is not an idle

formality or acrimonious exercise but a solemn and sacrosanct act which affords protection to government servants against the frivolous prosecution and must therefore, be strictly complied with before any prosecution can be launched against the Public Servant concerned."

11. In **State (Anti-Curruption Branch), Govt. of NCT of Delhi & Anr. Vs. Dr. R. C. Anand & Anr.** reported in (2004) 4 Supreme Court Cases 615, the Apex Court while disapproving the view taken by the Delhi High Court in the facts of the case before it, held that "certain material evidence was not looked into by the governing body to form its own independent opinion to depart from the view of the President while granting sanction" and while reiterating its earlier decision in **Kalpanath Rai Vs. State** reported in (1997)8 SCC 732 to the effect that the Sanctioning Authority is not required to wait for the report of the experts, ruled that the Sanctioning Authority has only to see whether the facts disclosed in the complaint prima-facie disclose commission of the offence or not and further held that, "authority of the sanction, would, therefore, depend upon the material placed before the Sanctioning Authority and the fact that all the

relevant facts, material and evidence including transcript of the tape record have been considered by the Sanctioning Authority; consideration implies application of mind. The order of sanction may ex-facie disclose that the Sanctioning Authority has considered the evidence and further material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the Sanctioning Authority". While arriving at the said ruling the Apex Court also referred to its two earlier decisions in the matter of **Jaswant Singh Vs. State of Punjab,** reported in AIR 1958 SC 124 and in **State of Bihar Vs. P. P. Sharma,** reported in 1992 Supp (1) SCC 222.

12. In **C.S. Krishnamurthy Vs. State of Karnataka** reported in (2005) 4 Supreme Court Cases 81 the Apex Court while reiterating its earlier decision in **R.S. Pandit Vs. State of Bihar,** reported in 1963 Supp (2) SCR 652 to the effect that "the facts should be referred to on the face of the sanction and if they do not so appear, the prosecution must prove them by extraneous evidence, is certainly sound having regard to the purpose of the requirements of a sanction..." it

was held that, "ratio in sanction order should speak for itself and in case the facts do not so appear, it should be proved by leading evidence that all the particulars were placed before the Sanctioning Authority for due application of mind. In case sanction speaks for itself then the satisfaction of the Sanctioning Authority is apparent by reading the order."

13. The settled law by a catena of decisions of the Apex Court is to the effect that it is desirable that every order whether the approval or sanction it should speak for itself, i.e. ex-facie it should disclose consideration of the materials placed before it and application of mind thereto. However, failure to reproduce or refer those recitals in the resolution or order itself would not render the order of approval or sanction to be invalid unless the prosecution fails to establish by leading evidence that all the materials necessary for the grant of approval or sanction were placed before the concerned authority for due application of mind by such authority before the grant of approval and or sanction. It apparently discloses that question of validity of approval or sanction cannot be decided unless the prosecution is afforded

opportunity to lead evidence in that regard. Undoubtedly, an accused desiring to raise objection regarding the defects in such approval or sanction, or grant, he can raise such objection; however, for conclusive decision on the said point the accused has to wait till the trial is complete and on that ground he cannot insist for discharge unless the objection relates to inherent lack of jurisdiction to the concerned authority to grant sanction or approval and such issue can be decided on undisputed facts. The law being well settled to the effect that the prosecution in a case where sanction or the approval order does not ex-facie show consideration of all the materials and/or application of mind, is entitled to establish the same by leading necessary evidence regarding production of materials before the concerned authority, the question of discharge of accused merely on the basis of such objection being raised cannot arise. The decision on the point of defect, if any, in the order of approval or sanction will have to be at the conclusion of the trial.

14. Reverting to the facts of the case, if one peruses the approval dated 28th August 2004, undoubtedly it refers to the effect of consideration of

all the materials which were placed before the authority and thereafter grant of approval for initiating proceedings under MCOC Act. Undoubtedly, while referring to the acts of the accused, all the ingredients of the definition of the "Organized Crime" do not seem to have been incorporated in the order of approval. However, that itself cannot be a justification for interference in holding the approval to be invalid or bad in law, in view of the fact that the prosecution is entitled to establish the same by leading necessary evidence. Prima-facie the competent authority appears to have taken into consideration all the materials which would reveal or disclose the commission of the offence of organized crime involving the appellant/accused. It is too premature to arrive at any conclusion to the contrary merely on reading of the order of approval.

15. It cannot be disputed that the provisions of MCOC Act being stringent, the same are to be strictly interpreted. The Apex Court in **Lalit Somdatta Nagpal's case** (supra) has clearly ruled to that effect. That was a case wherein the prosecution under MCOC Act was sought to be initiated on the ground of violation of Sales Tax and Excise Laws and in that context it was

held that sanction granted for prosecution under MCOC Act on those grounds disclosed complete non application of mind as the violation of Sales Tax and Excise Laws could not amount to commission of offence of organized crime. The Apex Court, therefore, held that having regard to the stringent provisions of MCOC Act, its provisions will have to be very strictly interpreted and the authorities concerned would have to be bound down to the strict observance of the said provisions.

16. The provision of law as comprised under Section 23(1)(a) of the MCOC Act states that "notwithstanding anything contained in the Code of Criminal Procedure, no information about the commission of offence of organized crime under this Act shall be recorded by police officer without the prior approval of the police officer, not below the rank of Dy. Inspector General of Police".

17. The said provision of law precisely provides that in order to initiate investigation under MCOC Act, prior approval of the police officer, not below the rank of Dy. Inspector General of Police is necessary. The said provision of law does not regulate the approval to be necessarily in writing.

Undoubtedly, being a matter for investigation in relation to a criminal offence of serious nature, it would always be expected and advisable to have such approval in writing. But it is pertinent to note at this stage that the decision of the Apex Court in **Kalpnath Rai (supra)** wherein while deciding with the question as to whether prior approval envisaged under Section 20-A(1) of Terrorist and Disruptive Activities (Prevention) Act, 1987 should necessarly be in writing, had held that there is nothing in the said sub-section to indicate that prior approval of the District Superintendent of Police should be in writing. What is necessary is the fact of approval which is **sine qua non** for recording the information about the commission of the offence the said Act. It is pertienent to note that provision of law comprised under Section 20-A(1) of TADA Act is in pari materia with that of Section 23(1)(a) of MCOC Act, except in relation to the designation of the authority. The approval under TADA had to be by the Officer of the rank of District Superintendent of Police whereas under MCOC Act approval or sanction had to be by the officer of the rank of Dy. Inspector General of Police or above. The ruling of the Apex Court in **Kalpnath Rai's case** (supra) clearly lays down the law that though the provisions of

MCOC Act being stringent and are required to be strictly interpreted, the provisions thereunder relating to grant of approval nowhere require the approval to be necessarily in writing. Undoubtedly that does not mean that the authorities can go on granting approval orally. There has to be authentic record regarding the grant of such approval prior in time of initiation of investigation under MCOC Act.

18. In the case in hand it is not in dispute that such approval was in writing granted on 28th August 2004. Whether it was on proper application of mind on the basis of the materials placed before the concerned authority or not and whether all the required materials were actually placed before the concerned authority or not, are the points to be decided at the conclusion of the trial so that the prosecution gets sufficient opportunity to establish all the facts necessary to prove the valid approval and sanction for the prosecution.

19. As regards the sanction dated 7th January 2005, according to the appellant it does not disclose consideration of materials qua each of the accused in relation to the alleged offence for which the sanction

has been granted. The contention is devoid of substance as the law on the point is well settled to the effect that in case the sanction document on the face of it does not disclose consideration of all the materials by the concerned authority, nothing prevents the prosecution from establishing the said fact by leading appropriate evidence in that regard.

20. The decision of the Apex Court in **Rambhai Nathabhai Gadhvi & Ors Vs. State of Gujrat,** reported in (1997) 7 SCC 744 which is sought to be relied upon on behalf of the appellant is no more a good law as it was specifically declared to be **per incuriam** by the Apex Court in the case of **Prakash Kumar Vs. State of Gujarat reported in (2005) 2 Supreme Court Cases 409.** The advocates appearing on behalf of the appellant are expected to verify such things and not to cite the judgment which has been overruled or specifically declared by the Apex Court as per incuriam. Failure in that regard can be construed as an attempt to mislead the court and can result in serious consequences. Surprisingly when we pointed out the fact that the decision in Rambhai's case has been declared per incuriam by the Apex Court in Akash Kumar's case there was no remorse or repentance expressed by the senior

advocate appearing for the appellant for having cited the decision which is already declared per incuriam. Be it as it may, while recording our displeasure, we leave the matter at that.

21. As regards the decision in **Anirudhsinhji Karamsinhji Jadeja's case** (supra) it was a matter wherein the approval was sought to be given under Section 20-A (1) of the TADA Act by Additional Chief Secretary, Home Department, in spite of the fact that the statutory provision require approval by the D.S.P. Paragraph 8 and 9 of the said decision read thus -

> "8. This section was introduced safeguard the citizens from vexatious prosecution under TADA. The Designated Court had failed to appreciate that the DSP had not given prior approval and the case of the appellants under TADA was, therefore, non est."
>
> 9. This ground appears to be of substance. The DSP did not exercise the jurisdiction vested in him under section 20-A(1). On the contrary, he abdicated his jurisdiction and referred the matter to the Additional Chief

> Secretary, Home Department, on 17-3-1995, requesting for permission to invoke the provisions of Sections 3 and 5 of TADA .."

It was further observed that, the case against the appellants originally was registered on 19-3-1995 under the Arms Act. The DSP did not give any prior approval on his own to record any information about the commission of an offence under TADA. On the contrary, he made a report to the Additional Chief Secretary and asked for permission to proceed under TADA. The matter did not end there. The Apex Court also found that even the Government had not applied its mind, and did not satisfy itself about the requirement for proceeding under TADA. This is evident from the following observation-

> "We are of the view that in the present case the same was given by the State Government without proper application of mind. We have taken this view because the sanction/consent was given by the Government merely on the basis of fax message dated 17-3-1995 of the DSP. The

reason for our saying so is that though there is no record a fax message of Deputy Director General of Police also, which is dated 18-3-1995, the sanction/consent order has mentioned above the fax message of DSP only. Now, no doubt the message of the DSP is quite exhaustive, as would appear from the message which has been quoted above in full, we are inclined to think that before agreeing to the use of harsh provisions of TADA against the appellants, the Government ought to have taken some steps to satisfy itself whether what had been stated by the DSP was borne out by the records, which apparently had not been called for in the present case as the sanction/ consent was given post-haste on 18-3-1995 i.e. the very next day of the message of the DSP. It seems the DSP emphasised the political angle in the first two paragraphs of his message....."

The records in the said case apparently disclosed that the government had given the sanction without even discussing the matter with the investigating officer

and wihout assessing the situation independently. The materials therefore clearly disclosed total non application of mind by the Sanctioning Authority, as also delegation of power of approval to the Additional Chief Secretary in spite of the fact that statutory provision nowhere permitted such delegation of powers by DSP, who is the competent authority for the approval and in those circumstances the Apex Court had quashed the proceedings under TADA. The facts of the case and the circumstances in which the Apex Court had set aside the proceedings under TADA, were totally different from the facts of the case in hand.

22. The decision in **Dilawar Singh's** case (supra) is in relation to Section 19 of the Prevention of Corruption Act, 1988. Section 19 specifically requires that no court shall take cognizance of offence punishable under Section 7, 10, 11, 13 and 15 of the Prevention of Corruption Act, alleged to have been committed by the public servant, except with the previous sanction. In spite of said specific provision in law, there was no sanction granted for prosecution of Dilwar Singh in terms of section 19 of the said Act and therefore, while holding that the existence of a sanction is **sine qua non** for taking cognizance of

offence qua the person, the proceedings were quashed against Dilawar Singh. Obviously, Section 19 of the Prevention of Corruption Act clearly requires a sanction to be granted for prosecution against a public servant with the name against whom the prosecution is sought to be launched. In the case of Dilawar Singh, no such sanction specifically had been granted in the name of Dilawar Singh, and therefore, it was held that the provisions were not complied with. That is not the case in the matter in hand.

23. The decision of Division Bench in **Sherbahadur Akram Khan's case** (supra) as well as decision of learned Single Judge in **Bharat Baburao Gavhane's case** (supra) are of no help to the appellant. The issue which arise in the case in hand did not arise in either of those cases. The point as to whether the applicability of mind by the concerned authority before grant of sanction can be established by leading evidence in cases where the same is not disclosed from the document of approval or sanction on the face of it or not did not arise for consideration in those cases. Being so, the said decisions are of no help for deciding the matter in hand.

24. The contention that the order of approval or order of sanction should disclose consideration of material qua each of the accused sought to be prosecuted is devoid of substance. That is not the import of section 23 of MCOC Act. Section 23(1)(a) as well as section 23(2) with reference to approval and sanction speaks of commission of offence and cognizance of the offence. In fact the law on this aspect is also well settled and reiterated by the Apex Court in **Dilawar Singh's case (supra)** itself. It was held therein that, court takes cognizance of offence and not of an offender when a Magistrate takes cognizance of an offence, under Section 190 Cr.P.C. Undoubtedly, it was also held that it was necessary for the Sanctioning Authority to take note of the persons against whom the sanction is sought to be granted. However, those were the requirement under Section 19 of the Prevention of Curruption Act. The said section specifically requires sanction with reference to a particular person. That is not the case under section 23 either in relation to the approval or in relation to the sanction. As already seen above section 23(1)(a) of MCOC Act speaks of approval for recording of information about commission of offence of organized crime under MCOC Act, whereas sanction is for initiating proceeding for

the offence under MCOC Act. The sanction order or the approval order on the face of it need not speak of the individual role of each of the accused. Being so, contention that the order of approval or sanction should reveal consideration of the overt acts or otherwise of each of the accused while granting approval or sanction is totally devoid of substance. Of course, the involvement in organized crime of each of the persons sought to be prosecuted should necessarily be considered by the concerned authority before the grant of approval or sanction, but need not be specifically stated in the order and the consideration thereof can be established in the course of trial.

25. It was also sought to be argued that the rule that the application of mind can be established by leading evidence would not apply in case of written approval or written sanction. As already held above the law on the point that the prosecution is entitled to establish the fact of application of mind by the concerned authority by leading evidence is well settled, and it makes no difference whether order is a written and or order. It was also sought to be argued that question of invoking or applying the

provisions of MCOC Act cannot arise without approval and sanction order discloses involvement of the appellant in an organized crime within the meaning of said expression under the said Act in as much as that the activities of the appellant are not disclosed to have been carried out with the object of gaining pecuniary benefits or economic gains. It is the contention on behalf of the appellant that though the sanction order refers to such activities, there is no reference to that effect in the order of approval. Again this is a matter for evidence. The order of the approval on the face of it may not disclose involvement of the appellant in the activities being carried with the object of gaining pecuniary benefits or economic gain. Whether organized crime is restricted to the activities carried out with the object of gaining pecuniary benefits or economic gains or whether it would apply even to the activities which are carried with the object of gaining other advantages for himself or for any person and whether the expression "such any other advantage" would include activities carried out with the object other than the economic gain or pecuniary benefit, all these factors will have to be decided on the basis of the evidence to be led by the prosecution. To what extent activities were either to

the advantage of the appellant himself or any other person is a matter of evidence, to be decided, based on the materials to be placed on record in the course of evidence and it is too early to make any judicial pronouncement in that regard.

26. Much stress was laid on paragraph 12 of the decision in **Sherbahadur Akram Khan's case** (supra) while contending that section 2(1)(e) requires activities with an objective of pecuniary benefits or economic gain. Plain reading of paragraph 12 of Sherbahadur Khan's case would disclose that the Division Bench was not dealing with the scope of the definition of the expression "organized crime" under section 2(a)(e) but the court was discussing the matter in relation to the facts of the particular case. It has been observed therein that, "apart from this, as aforesaid the unlawful activity is not relatable to any pecuniary advantage of economic gain for the accused. The words in section 2(e) "with the object of gaining pecuniary benefits or gaining undue economic or other advantage" will have to be given some effective meaning. Applying the principle of **ejusdem generis** the words "other advantage" will have to be interpreted in the same manner as the previous terms "pecuniary benefits" or

"undue economic advantage". A quarrel at a water tap which resulted in violence cannot be an offence which falls within this definition. Assaults on some persons also cannot be considered as offences which have been undertaken for pecuniary gain or undue economic advantage. The sanction order which we have perused also does not disclose that there was any material before the Commissioner of Police to arrive at such a conclusion. According to the learned A.P.P. these assaults were carried out in order to gain supremacy in the local area where the accused resided and operated. However, a perusal of the sanction order does not reveal that this factor weighed with the Commissioner. In the present case, the order does not in any manner indicate that there was any material before the Commissioner or that he has considered the material showing that the accused had assaulted others for the purposes of economic gains." Apparently the matter proceeded on assumption that the expression **"other advantages"** has to be read by applying principle of **"ejusdem generis"** to the terms "pecuniary benefits or undue economic advantage" without considering point as to how the expression "other advantage" can be understood by applying the principle of "ejusdem generis" in section 2(1)(e) of MCOC Act. The

consideration of the said expression "other advantage" was strictly with reference to the facts of the case rather than interpreting the provision under section 2(1)(e) of MCOC Act. Such a ruling cannot be said to lay down a binding principle. The ratio of a decision is one which is pronounced after taking into consideration of the point which arises for consideration, the arguments advanced with reference to such point and analysis thereof and considered opinion expressed thereupon. Law on this point is well settled by the decision of the Apex Court in **Union of India Vs. Dhanwanti Devi** reported in **1996(6) SCC 44.** Applying the same, the observation in the **Sherbahadur Akram Khan's case** cannot be held to be laying down of law in relation to the expression "other advantage" appearing in section 2(1)(e) of MCOC Act. In fact the said point did not even arise for consideration in that case.

27. For the reasons stated above therefore, appeal fails and is hereby dismissed with costs.

Sd/-
[R.M.S. KHANDEPARKAR, J.]

Sd/-
[A. A. SAYED,J.]